

**LUCILLE SMITH,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **CHRISTOPHER CAPPS, Individually** ) **ORDER**  
 **and Officially, AMY JAMES, and** )  
 **KEVIN JAMES, Individually and** )  
 **Officially,** )  
 )  
 **Defendants.** )  
 )

### **I. Extending Plaintiff's Time to Respond Would Serve No Purpose**

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## **II. Plaintiff's Claims are Barred by the North Carolina Statute of Limitations**

Smith has filed parallel state and federal actions claiming violations of Due Process and § 42 U.S.C. 1983, as well as state tort claims for trespass by a public official, false imprisonment, and malicious prosecution. Though these claims stem from events that occurred on the evening of August 12, 2002 and the early morning of August 13, 2002, this action was not filed until November 3, 2005.

Plaintiff's § 1983 and Due Process claims are governed by the state's Statute of Limitations. Nat'l Advertising Co. v. City of Raleigh, 947 F.2d 1158, 1161 (4th Cir. 1991) (§ 1983 actions); Block v. North Dakota ex rel. Bd. of Univ. And School Lands, 461 U.S. 273, 292 (1983) (constitutional claims). Trespass by a public official and false imprisonment are explicitly limited by statute to a three-year filing period, which would have expired on August 13, 2005. N.C. Gen. Stat. Ann. § 1-52(13) (trespass by public official); N.C. Gen. Stat. Ann. § 1-52(19) (false imprisonment). Malicious prosecution has likewise been held to the same three year bar. See Evans v. Chipps, 287 S.E.2d 426, 424 (N.C. App. 1982), overruled on other grounds by Fowler v. Valencourt, 435 S.E.2d 530 (N.C. App. 297). Thus, all the state tort claims are barred by the Statute of Limitations, and by extension, so are the federal claims.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to In Large Time on Inactive Calendar is **DENIED** and Defendants' Motions to Dismiss are **GRANTED**. This case is hereby dismissed with prejudice.

Signed: May 2, 2006



Graham C. Mullen  
United States District Judge



